IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 11528 of 2005

Date of Decision : 06.03.2007

Doctor Gurdev Singh

….Petitioner

Versus

State of Punjab and another.

… Respondents

CORAM : HON'BLE MR. JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. H.S. Sirohi, Advocate,
for the petitioner.

Mr. B.S. Chahal, Assistant Advocate General, Punjab,
for respondent Nos. 1 and 2.

S.D. ANAND, J.

1. Facts, discernible from the pleadings and otherwise also conceded at the time of arguments before this Court, are as under:-

2. First enquiry into the allegations (indicated in Annexure P/1) against the petitioner was held by Dr. H.L. Kajal, Medical Superintendent, Guru Gobind Singh Hospital, Faridkot who, vide report dated 11.10.2004 (Annexure P/3), recording a finding of exoneration. However, the Competent Authority did not agree with that finding and ordered an enquiry afresh vide order dated 01.12.2004 (Annexure P/4). The second enquiry was to be held by an Indicated Former Bureaucrat. The petitioner repeatedly challenged the competence of the second enquiry particularly because the outcome of the first enquiry had not been intimated to him and no reasons for holding of the second enquiry had been intimated to him. The plea raised

by the petitioner (and described by the Enquiry Officer as a plea of double jeopardy) was declined by the second Enquiry Officer vide order dated 03.06.2005 (Annexure P/8). He noticed, in the course of that order, a submission by the petitioner that the previous enquiry had exonerated him. The order also noticed that a copy of the first enquiry report had been provided by the petitioner to the departmental representative. The second Enquiry Officer held that there is nothing illegal in holding of the enquiry "as the rule of Double Jeopardy is not attracted as this stage". At the same time, the second Enquiry Officer directed the departmental representative to obtain a report from the department/government about the final action taken on the previous report.

3. As noticed in the second enquiry report (Annexure P/11), it was the stand of the department that the charges in the second enquiry were the same which had already been enquired into by the first Enquiry Officer, who had exonerated the petitioner. As noticed by the second Enquiry Officer in the report afore-mentioned, the departmental representative declined to give reasons about why the government had taken a decision to hold a second enquiry. The second enquiry report indicted the petitioner. It is the validity of the second enquiry report which is under challenge in the Civil Writ Petition before this Court.

4. It is only in the course of the written statement that the following order is averred to have been recorded by the Competent Authority on the first enquiry report:-

> "The inquiry report is an eye wash. I have no hesitation to order a de-novo inquiry by appointing Shri K.C. Maini, IAS (Rtd.) as Inquiry Officer."

5. There is plethora of law on the point that though the Competent Authority is entitled to differ with the finding recorded by an Enquiry Officer, it is compulsive for it to afford an opportunity to the delinquent official in the context before ordering a fresh enquiry. Needless to say, it would be imperative for the Competent Authority to record reasons for dis-agreement with the first enquiry finding. The cause of dis-agreement is also required to be communicated to the delinquent official. As noticed by the second Enquiry Officer in the report (Annexure P/11), the departmental representative had not spelt out what had impelled the Government to order second enquiry. The commonness of allegations in both the enquiries is beyond the pale of controversy. In the circumstances of the case, the only finding that can be recorded is that the second enquiry proceedings are plainly invalid. For reliance, we may refer with advantage to AIR 1999 Supreme Court, 3734 (Yoginath D. Bagde Versus State of Maharashtra and another) and AIR 1998 Supreme Court 2713 (Punjab National Bank versus Kunj Bihari Mishra).

6. For the afore-mentioned reasons, this writ petition shall stand allowed with costs quantified as Rs. 5,000/-. The Competent Authority would, however, be at liberty to proceed afresh in the matter in its own discretion but only after complying with the law laid down by the Apex Court in Yoginath D.Bagde's case and Punjab National Bank's case (supra).

(S.D. Anand)
Judge

March 06, 2007
vkd

(J.S. Khehar)
Judge